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2
3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: March 28th, 2013**

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7
8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

11 LLS AMERICA, LLC,

12 Debtor.

No. 09-06194-PCW11

13 _____
14 BRUCE P. KRIEGMAN, solely in
15 his capacity as court-appointed
Chapter 11 Trustee for LLS America,
LLC,

16 Plaintiff,

Adv. No. 11-80302-PCW11

17 vs.

18 ANTHONY ALFARONE, et al.,

19 Defendants.
20 _____

MEMORANDUM DECISION RE:
PLAINTIFF'S MOTION TO COMPEL
DISCOVERY CONCERNING
DEFENDANT HASTY CHARITABLE
REMAINDER TRUST (ECF NO. 131)

21 The purpose of this decision is to resolve and provide guidance to the parties
22 concerning plaintiff's Motion to Compel Discovery (ECF No. 131) compelling
23 defendant Hasty Charitable Remainder Trust (hereinafter "named defendant") to answer
24 discovery and to resolve said motion. As there are numerous related adversary
25 proceedings brought by the same plaintiff in which similar discovery issues may arise,
26 this memorandum decision should also be of guidance in those adversaries.

27 As the named defendant did not appear at the hearing on March 25, 2013, no
28 explanation has been provided justifying the failure to respond to many interrogatories

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1 and requests for production. Nor has any explanation been provided supporting the basis
2 for the numerous objections to the same.

3 FACTS

4 The interrogatories were initially served December 19, 2012, with the responses
5 received January 23, 2013. Plaintiff's motion to compel discovery was filed February 22,
6 2013 (ECF No. 131). Counsel for the named defendant filed a motion to withdraw on
7 January 4, 2013 (ECF No. 115), which was granted, thus the named defendant and
8 several other defendants in the related adversaries are apparently unrepresented at this
9 time. However, the standards concerning compliance with discovery rules are applicable
10 to both unrepresented parties and those that are represented by counsel.

11 Based solely upon a review of the responses to the interrogatories and requests to
12 produce, it appears likely that the responses were not formulated in good faith. Although
13 a few of the objections are well taken, overall the responses ignore the spirit of discovery
14 as well as the rules regarding discovery. The objection, which is based upon the lack of
15 any temporal limits, is well taken. Plaintiff must amend or supplement the discovery to
16 provide a temporal limit.

17 Not a single document was produced in response to 19 document requests. There
18 is simply no response of any kind to many of the interrogatories. Most of the objections
19 to the interrogatories are ill founded and/or spurious. For example, Interrogatory No. 1
20 requests the full name, residential address, and date of birth of the named defendant. No
21 information is provided due to the objection that the information sought is not relevant.
22 It is difficult to imagine a lawsuit where the full legal name of the defendant is
23 irrelevant. In this and other related adversaries, the defendants have raised issues of
24 insufficiency of service of process and jurisdiction, which certainly render a request for
25 information as to residence relevant. As to the request for the date of birth of the named
26 defendant (or date of formation and primary place of business for a corporate defendant)
27 that information too may be relevant.

28 The preliminary conclusion is that the named defendant should be sanctioned

1 \$500 payable to counsel for the plaintiff as partial compensation to plaintiff of the costs
2 of proceeding with the motion to compel.

3 Should the named defendant believe that sanction is inappropriate, an explanation
4 regarding the failure to respond to many of the interrogatories and requests to produce
5 must be provided and filed by no later than **April 15, 2013**, together with a motion to
6 reconsider. Should such motion be filed, it is the moving party's duty to contact the court
7 to schedule a hearing.

8 REQUIREMENTS IN GENERAL

9 1. Each question or request to produce which contains the word "invest" is
10 objected to on the basis that the term is vague and ambiguous. Plaintiff defined the term
11 at paragraph 20, which definition is adequate to formulate a response by the named
12 defendant. This objection is not well-founded and appears to be an attempt to avoid
13 discovery goals.

14 2. An objection is made to any questions and requests to produce which
15 contain the term "financial statement" on the basis that the term is vague or ambiguous.
16 The term is commonly used not only in the business world, but also in consumer
17 transactions and has a commonly understood meaning. The term is not vague. The
18 objection is overruled. However, to assist the named defendant, the named defendant is
19 advised that the term refers to documents (the plaintiff has included electronic
20 information in the definition of "documents"), which contain information regarding
21 assets and liabilities, and/or income and expenses and/or profit and loss.

22 3. There are several interrogatories and requests regarding expert witnesses.
23 The named defendant has not responded. If no experts have been retained, the named
24 defendant should so state. As to experts on common issues, if the named defendant is
25 relying upon the experts previously identified for the summary judgment hearing
26 regarding common issues as described in the Amended Case Schedule Order Re
27 Common Issues (ECF No. 214) in adversary proceeding No. 11-80299-PCW11, the
28 named defendant should so state. The named defendant is also directed to review the

1 Amended Case Schedule Order Re Non-Common Issues (ECF No. 219) in adversary
2 proceeding No. 11-80299-PCW11, which is applicable in this adversary. The Amended
3 Case Schedule Order Re Common Issues (ECF No. 214) requires experts regarding
4 common issues to be made available for depositions by May 31, 2013. The Amended
5 Case Schedule Order Re Non-Common Issues (ECF No. 219) requires all experts
6 regarding non-common issues to be identified and Rule 26 materials exchanged by
7 June 20, 2013, with all discovery completed by July 15, 2013.

8 Parties responding to discovery are specifically required by Fed. R. Bankr. P.
9 7026(e) to supplement ALL responses to interrogatories, should information be
10 discovered which renders the prior answer incorrect or misleading. As to experts, if and
11 when the named defendant identifies experts, the named defendant must promptly
12 supplement the interrogatories and requests with the appropriate information.

13 4. The named defendant must comply with the requests to produce documents.
14 Fed. R. Bankr. P. 7034 requires that the named defendant identify each document as
15 being produced in response to a particular request and provide an index of the
16 documents produced. Again, the named defendant is reminded that the definition of
17 “document” includes electronic documents, which are addressed in Fed. R. Bankr. P.
18 7034(E).

19 5. Some objections refer to a “privilege” as excusing production of documents
20 or communications. The response must be amended to state the nature of the privilege,
21 i.e., attorney-client, spousal, etc. A privilege log is required to be produced for the
22 response, which must include the nature of the item not produced, the date and identity
23 of the person other than named defendant involved in the communication, i.e., spouse,
24 attorney, etc. The log must be indexed.

25 **6. Failure to participate and respond to discovery as required in this**
26 **order or Fed. R. Civ. P. 26 may result in sanctions, which may include directing**
27 **that certain facts are established for purposes of the action, prohibiting certain**
28 **claims or defenses, striking pleadings and awarding fees and expenses for delay.**

1 **Fed. R. Bankr. P. 7037; Fed. R. Civ. P. 37(b)(2)(A)(i)-(iv), (c).**

2 **SPECIFIC INTERROGATORIES AND REQUESTS FOR PRODUCTION**

3 A response must be made to each interrogatory and request to produce. Even
4 though a particular interrogatory or request to produce is not specifically identified in
5 this decision, a full and complete response must be made and any objection set forth. By
6 responding, the named defendant is not waiving any such objection. If the named
7 defendant has already provided the requested information or documents, the named
8 defendant must indicate the date which the information was provided and to whom and
9 how it was provided, i.e., attachment to a proof of claim, an e-mail to counsel, etc. The
10 named defendant is cautioned that although some of the requested information may have
11 been provided previously, it may not have been as specific or as complete as is
12 requested. Because the named defendant is not now represented by counsel, and the
13 level of financial sophistication is unknown, plaintiff may, at its option, choose to clarify
14 any interrogatories or requests to produce, but is only required to do so as specifically
15 required herein.

16 Interrogatory No. 3 - Plaintiff must clarify that this interrogatory and others
17 referring to “claims and defenses,” is limited to claims and defenses of the answering
18 defendant(s).

19 Interrogatory No. 4 - This is one of many interrogatories for which no response
20 was made. The named defendant must describe in detail the actions the named defendant
21 undertook to locate all documents requested, including the identity of any other
22 individuals the named defendant requested assistance in the search.

23 Interrogatory No. 9 - The named defendant must describe in detail the
24 circumstances leading to the decision to invest or loan funds with the debtor.

25 Interrogatory No. 11 - The named defendant must respond with specificity to the
26 best of its recollection and provide the documents referenced in Request for Production
27 No. 4 or, if appropriate, provide a privilege log.

28 Interrogatory No. 13 - This interrogatory must amended or clarified by the

1 plaintiff.

2 Interrogatory No. 15 - An objection is made that the date of the document should
3 not be provided as the documents speak for themselves. In this case, there are instances
4 of undated documents and a postal strike which allegedly prevented delivery of mailed
5 documents. Thus, request for the date of receipt of the documents is relevant.

6 Request for Production Nos. 16 and 17 - These Requests for Production contain
7 an objection that they are vague and ambiguous. They are not. It is difficult to
8 understand how the requests could be made plainer. Should the named defendant
9 continue to object on the basis that the request is unduly burdensome, the objection must
10 set forth the specific basis for the objection and describe the burden imposed.

11 Request for Production No. 19 - The objection that this request duplicates the
12 documents sought in Request for Production No. 5 would have been well-founded if any
13 response had been provided to Request for Production No. 5. All documents sought in
14 Request for Production No. 5 and/or Request for Production No. 19 must be produced.

15 This Memorandum Decision resolves plaintiff's Motion to Compel Discovery
16 (ECF No. 131) and an order will be entered accordingly.